IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

JUDGMENT

S.B. CIVIL MISC. APPEAL NO. 3484/2006

M/S R.E.C. SOFTWARE & ANR.
Vs.
M/S I.E.C. SOFTWARE LIMITED & ORS.

DATE: 06.02.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. B.D. Agarwal with
Mr. Prahlad Sharma for the plaintiffs/appellants.
Mr. J.K. Bhola for the respondent No.1.
Mr. Banwari Sharma for defendant-respondent No.2.
Mr. J.D. Sharma with
Mr. S.K. Sharma for respondents Nos. 3 and 4.

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The instant civil misc. appeal under Order 43 Rule 1(r) of the Code of Civil Procedure is directed against the order dated 22.09.2006 passed by the Additional District Judge No.2, Jaipur City, Jaipur in Misc. Case No. 47/2006, whereby the temporary injunction application filed by the appellant-plaintiffs has been partly allowed, but in the manner in which the temporary injunction application has been allowed, the appellants are not satisfied and, therefore, being dissatisfied with this they preferred this appeal against the impugned order dated 22.09.2006.

The Court below has granted temporary injunction in the following terms:-

"परिणामत: उक्त विवेचन के अनुसार प्रार्थना पत्र स्वीकार कर इस आशय की अस्थायी निषेधाज्ञा मूल वाद के निर्णय अथवा उक्त दोनों अनुबंधों के अन्तर्गत दोनों प्रोजेक्ट पूर्ण होने तक, जो पहले हो, तक पारित की जाती है कि प्रतिवादी सं. 1 अपने दोनों प्रोजेक्टों के अन्तर्गत राज्य सरकार से मिलने वाली राशि में से अनुबंध दिनांक 23.1.2003 व 20.8.2003 के अन्तर्गत अपनी निर्धारित रायल्टी/प्रीमियम की तयशुदा राशि काट कर शेष राशि प्रतिवादी सं. 2 से 4 को दे देगा और प्रतिवादी सं. 2 से 4 इस राशि का 1 प्रतिशत हिस्सा बैंक में ही जमा रहने देंगे और उठा नहीं पायेंगे और 1 प्रतिशत की इस राशि का छोड़ कर शेष राशि को वे बैंक से प्राप्त कर सकेंगे और अपने उपयोग में ले सकेंगे। यह 1 प्रतिशत राशि मूल वाद के निर्णय के अध्ययीन होगी।"

The case of the learned counsel for the appellants is that while considering the temporary injunction application, the Court below has not considered this aspect that the respondent No.1 is not entitled to get any relief and the Court has partly allowed to draw the money after leaving 1% of the amount which shall remain subject to decision of the suit.

He further submits that percentage which has been fixed at this stage, is not correctly fixed and further submits that as per the temporary injunction application, wherein in para No.13 it is categorically stated that the appellant No.1 and respondent NO.1-Company have executed an agreement dated 20.08.2003 and as per the agreement, 15% of the amount is required to be deduced from the amount received from the State. He also referred the observations made by the Court below.

I have heard rival submissions of the respective parties and have also gone through the impugned order dated 22.09.2006.

It is not disputed that the suit in question is still pending and the issues which are raised here by the appellants, can only be decided at the time of final adjudication of the suit and the relief which is claimed by the appellants is in final nature which cannot be granted at this stage. Even otherwise, considering this aspect the order passed on the temporary injunction application dated 22.09.2006 considering the balance of convenience is innocuous order, as mentioned herein above, but in the interest of justice, I deem it proper to consider the submissions made on behalf of the appellants that the observations made by the Court below in the impugned order dated 22.09.2006 shall not come in the way of final outcome of the suit.

It is expected from the Court below to decide the suit expeditiously after giving opportunity of being heard to the parties and the appellants are at liberty to raise the submissions which are raised here in the appeal before the Court below and looking to the controversy which has been raised in the present civil misc. appeal, the trial Court is directed for expeditious hearing and decide the suit expeditiously, but in any case not beyond the period of six months from the date of receipt of certified copy of this order and the withdrawal which has been permitted by the trial Court vide its impugned order dated 22.09.2006, shall remain subject to decision of the suit in question and in case the appellants succeed in suit for the damage they are entitled to redress their grievance before appropriate forum, but in any case, at this state, I find no illegality or error apparent on the face of the record in the impugned order dated 22.09.2006, which requires no interference by this Court.

Consequently, the present civil misc. appeal fails and the same is hereby dismissed. The interim order also stands rejected.

(K.S. RATHORE), J.

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